HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No.22284 OF 2006

Dated 13th August, 2007

Between
The Nehru High School, Kachiguda, Hyderabad,
Rep. by its Secretary and Correspondent
BrijrajSrivastav, and, anr

..Petitioners

and

The Government of Andhra Pradesh,
Rep. by its Secretary, School Education Department
Secretariat, Hyderabad, and, ors

….Respondents.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No.22284 OF 2006

ORDER:

The first petitioner is a High School, which is being run in the name of Nehru High School, at Kachiguda in Hyderabad. The second petitioner is working as Junior Assistant in the said school in the unaided vacancy. This Writ Petition is filed seeking Writ of Mandamus to direct the respondents to admit the post of Junior Assistant held by the second petitioner in the first petitioner-school from the date of her initial appointment, to grant-in-aid.

The first petitioner-school was established in the year 1966. The said school was upgraded to High School and High School sections were opened in the year 1992. Certain posts of Upper Primary classes of the said school, namely, one post of School Assistant, two posts of Secondary Grade Teacher, one post of Hindi Pandit Grade-II in so far as English Medium are concerned, and, four posts of Secondary

Grade Teacher in so far as Telugu Medium are concerned, were admitted to grant-in-aid vide G.O.Ms.No. 7, Education (I) Department, dated 3-1-1979. The first petitioner- School was admitted to aid and is functioning as such, and the staffing pattern, consisted of the non-teaching posts, such as Junior Assistant/Record Assistant/Attender. In view of the dire necessity of appointment of Junior Assistant, the first petitioner school addressed a letter dated 9-3-1992 to the fourth respondent-District Educational Officer, Hyderabad, to depute a nominee of the Department for the purpose of constituting Staff Selection Committee for selecting a candidate to the un-aided post of Junior Assistant. Interviews were initially scheduled on 26-4-1992, but however, as no nominee was deputed, the interviews were postponed, and, ultimately the Staff Selection Committee met on 10-5-1992 and interviewed five candidates and selected the second petitioner to the post of Junior Assistant. Accordingly result of the selection was communicated to the second petitioner by the first petitioner-school vide letter dated 4-6-1992 and subsequently appointment orders were issued on 17-7-1992. The second petitioner is being continued from the date of her appointment as Junior Assistant in the un-aided vacancy and the salary is being paid by the first petitioner-school. Though the second petitioner is working since 1992 and no steps were taken for admission of the said post held by her to grant-in-aid, the first petitioner-school made a representation on 12-10-2000 to the first respondent seeking conversion of one post of Secondary Grade Teacher which was admitted to grant-in-aid to that of Junior Assistant. It is the case of the petitioners that such conversion will not involve additional financial burden to the Government. When the said proposal was recommended by the fourth respondent, the third respondent by proceedings in Rc.No. 636/A1/2004, dated 21-4-2004 refused the request of the first petitioner-school for admission of the post held by the second petitioner into grant-in-aid on the ground that the management of the first petitioner-school has not followed the

procedure contemplated in G.O.Ms.No. 524, dated 20-12-1988, and, as such, she is not eligible for absorption into the aided post. It is the case of the petitioners that in spite of the request of the petitioner-school, no nominee of the Department was deputed to select the Junior Assistant and in view of the necessity of the school, the Staff Selection Committee constituted by the first petitioner-school proceeded with the selection and appointed the second petitioner. Further, it is the case of the petitioners that no specific reasons are assigned in the proceedings dated 21-4-2004 and simply stated that appointment of the second petitioner was not in accordance with the procedure contemplated in G.O.Ms.No. 524, dated 20-12-1988 and therefore, it is not open for the respondents to reject the request of the first petitioner-school.

Counter affidavit is filed on behalf of the respondents by the fourth respondent-District Educational Officer, Hyderabad. While generally denying the allegations of the petitioner, it is stated that earlier orders were issued in G.O.Ms.No. 7, dated 3-1-1979 admitting certain posts of Upper Primary classes, and, the High School is not admitted to aid and is functioning as such, and as per the staffing pattern, non-teaching posts, such as Junior Assistant/Record Assistant/Attender are the posts existing in the High School. It is stated that the petitioner-school was admitted to grant-aid-aid only so far as the Upper Primary classes are concerned and the non-teaching posts were not sanctioned to the Upper Primary School. Precisely, it is the case of the respondents that as the appointment of the second petitioner was not in accordance with the procedure prescribed for appointment to un-aided vacancy, and, in view of the fact that the High School sections were opened subsequently after admission of posts of Upper Primary classes to grant-in-aid, the petitioners are not entitle for relief for admission of the post of Junior Assistant to grant-in-aid.

Heard Sri P.Balakrishna Murthy, learned Counsel appearing for the petitioners and the learned Government Pleader for Education appearing for the respondents.

It is submitted by the learned Counsel appearing for the petitioners that as much as the fourth respondent was requested to depute nominee of the Department for making selection to the post of Junior Assistant and on his failure to depute any nominee only, the Selection Committee constituted by the School selected the second petitioner on 10.5.1992 to the post of Junior Assistant after following the due procedure for such selection and considering the comparative merit of the candidates, it cannot be said that appointment of the second petitioner is not in accordance with the procedure contemplated in G.O.Ms.No. 525, dated 20-12-1988. It is submitted by the learned Counsel for the petitioner that as per the statutory rules, there is a deemed approval in the above circumstances. It is further submitted by the learned Counsel for the petitioner that in any event, as the petitioner was appointed as early as in the year 1992 and being continued as on today, it is not open for the respondents to raise such objection at this point of time.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that High School sections were opened subsequently, and, in that view of the matter, the petitioners are not entitle for admission of the post in the staffing pattern contemplated for high school sections as per the provisions of the AP Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988, (Act 22 of 1988). It is submitted that as per the provisions of the Act 22 of 1988, the institutions which are established after 1-4-1977 and existing as on 1-9-1988 alone are entitled to receive grant-in-aid on the recommendation of the High Level Committee constituted in G.O.Rt.No.220, Education, dated 24-2-1988.

With reference to the above submissions of the learned Counsel, it is to be seen, that after the representation made by the first petitioner-school seeking conversion of the post of Junior Assistant, the fourth respondent-District Educational Officer had forwarded his recommendations to the Regional Joint Director of School Education, who vide his proceedings dated 21-4-2004 rejected the request of the petitioner on the ground that appointment of the second petitioner was not approved by the competent authority and the management of the first petitioner-school had not followed the procedure contemplated in G.O.Ms.No. 524, dated 20-12-1988. In the said proceedings, no specific reasons are assigned. Whereas, it is the case of the petitioner that as much as there was no response in spite of the letter addressed by the first petitioner-school to depute nominee of the Department for constitution of Selection Committee, the Selection Committee constituted by the petitioner school proceeded with the selection and made appointment. As per the procedure contemplated in the statutory rules framed in G.O.Ms.No. 524, dated 20-12-1988 it is a valid appointment. It is further submitted that once Upper Primary School of the first petitioner was upgraded to High School, it is not open for the respondents to reject the claim of the petitioner on the ground that the High School sections were opened in the year 1992. Though, initially, the Regional Joint Director of School Education had rejected the request of the petitioner on the ground that the appointment of the second petitioner was not in accordance with the procedure contemplated in G.O.Ms.No. 524, dated 20-12-1988, but, basing on the further representation submitted by the second petitioner on 18-3-2005, the second respondent-Commissioner and Director of School Education, vide letter in proceedings 2442/B4-2/1992, dated 8-4-2005 addressed the Government for issuing suitable orders in view of the service rendered by the second petitioner in the un-aided post of Junior Assistant. However, it appears that no further orders have been passed by the Government. Even in the letter dated 8-4-2005, a copy

of which is filed along with the reply-affidavit, it appears, the second respondent also recorded a finding that the appointment of the second petitioner was not in accordance with the procedure contemplated in G.O.Ms.No. 524, dated 20-12-1988. As it is not in dispute that the primary sections and upper primary sections of the first petitioner-school were admitted to grant-in-aid earlier to 1-9-1988, the cut off date notified in the Act 22/1988, whether the first petitioner-school can be treated as existing school or not in view of its up-gradation to the High School subsequently, is a matter which requires to be considered. As much as the said aspect was not considered in detail at any point of time, in my opinion, the matter requires consideration afresh.

Accordingly, I dispose of the Writ Petition, permitting the petitioners to file a fresh representation before the Director of School Education, within a period of four weeks from today. If such representation is filed, the second respondent-Director of School Education shall examine the claim of the petitioners afresh, and, shall forward the proposals to the Government with appropriate recommendations within a period of two months from the date of receipt of the representation. Thereafter, the first respondent-Government, shall take appropriate decision in the matter and communicate the same.

Subject to the above direction, the Writ Petition is disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 13th August, 2007.
Msnr.